



**BEXAR COUNTY  
PUBLIC DEFENDER'S OFFICE  
MICHAEL L. YOUNG, CHIEF PUBLIC DEFENDER**

July 25, 2019

FILED  
COURT OF CRIMINAL APPEALS  
7/25/2019  
DEANA WILLIAMSON, CLERK

Ms. Deana Williamson  
Clerk of the Court  
Court of Criminal Appeals of Texas  
P.O. Box 12308  
Austin, Texas 78711

RE: CCA No.: PD-0787-18; Appeal No.: 04-17-00139-CR; Trial Cause No.: 2015-CR-6149-A.

Dear Ms. Williamson:

Yesterday, July 24, 2019, this Court very graciously accepted appellant's amended motion for rehearing in the above-styled & numbered cause. Therein, appellant described a headnote published in this case by the reporting service, "Westlaw". That description was accurate at the time it was placed into appellant's motion.

Westlaw has since "tweaked" its headnote, and may do so again, in response either to concerns expressed by appellant or modifications made by this Court to its own opinion.

The different versions of the headnote in question are attached. If anything else in that headnote changes, I will write to inform the Court, just as I am now.

If anyone has questions, comments, or suggestions, please feel free to contact me directly.

Very truly yours,

Dean A. Diachin

DEAN A. DIACHIN

Bexar County Assistant Public Defender.

Enclosures:  
DD

2019 WL 2814861

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

Court of Criminal Appeals of Texas.

Demond FRANKLIN, Appellant

v.

The STATE of Texas

NO. PD-0787-18

Delivered: July 3, 2019

Synopsis

Background: Defendant was convicted in the 227th Judicial District Court, Bexar County, No. 2015CR6149A, Melisa Skinner, J., of capital murder and received mandatory sentence of life imprisonment without parole. Defendant appealed. The San Antonio Court of Appeals, 2018 WL 3129464, affirmed.

Holdings: On petition for discretionary review, the Court of Criminal Appeals, Keller, J., held that:

[1] defendant forfeited claim that under Miller v. Alabama State had burden to prove that defendant was at least 18 years of age on date of offense;

[2] a defendant’s age at the time of the offense is an affirmative defense for which the defendant bears the burden of proof;

[3] in the statute establishing the punishments for a defendant convicted of a capital felony, the language relating to the defendant’s age does not prescribe an element of a capital-murder offense but is a matter relating to punishment; and

[4] the language of the statute establishing the punishments for a defendant convicted of a capital felony creates a defensive issue of being under age 18 rather than a punishment enhancing issue of being 18 years of age or older.

Affirmed.

West Headnotes (8)

[1] Criminal Law
Sentencing and Punishment

Defendant convicted of capital murder and sentenced to mandatory life imprisonment without parole forfeited claim that under Miller v. Alabama, which held that mandatory life without parole for defendant under age of 18 at time of offense violated Eighth Amendment’s prohibition on cruel and unusual punishments, State had burden to prove that defendant was at least 18 years of age on date of offense, where defendant failed to raise in trial court issue of whether he was 18 years old at time of offense. U.S. Const. Amend. 8.

Cases that cite this headnote

[2] Criminal Law
Matters of defense and rebuttal in general

A defendant’s age at the time of the offense is an affirmative defense for which the defendant bears the burden of proof.

Cases that cite this headnote

[3] Statutes
Plain language; plain, ordinary, common, or literal meaning
Statutes
Relation to plain, literal, or clear meaning; ambiguity

In construing a statute, a court gives effect to the plain meaning of its text unless the text is ambiguous or the plain meaning leads to absurd results that the legislature could not have possibly intended.

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Holdings: On petition for discretionary review, the Court of Criminal Appeals, Keller, J., held that:

[1] defendant forfeited claim that under Miller v. Alabama State had burden to prove that defendant was at least 18 years of age on date of offense;

[2] a defendant asserting that he is ineligible for a particular punishment based on his age has the burden to prove that he falls within the applicable class of ineligible persons;

[3] in the statute establishing the punishments for a defendant convicted of a capital felony, the language relating to the defendant's age does not prescribe an element of a capital-murder offense but is a matter relating to punishment; and

[4] the language of the statute establishing the punishments for a defendant convicted of a capital felony creates a defensive issue of being under age 18 rather than a punishment enhancing issue of being 18 years of age or older.

Affirmed.

West Headnotes (8)

[1] Criminal Law
Sentencing and Punishment

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Cases that cite this headnote

[2] Criminal Law
Matters of defense and rebuttal in general

A claim that a defendant is ineligible for a particular punishment based on age is like an Atkins intellectual-disability claim in that a characteristic of the defendant that mitigates moral culpability creates an exemption with respect to punishment; given this similarity, a person asserting such a claim has the burden to prove that he falls within the applicable class of persons.

Cases that cite this headnote

[3] Statutes
Plain language; plain, ordinary, common, or literal meaning
Statutes
Relation to plain, literal, or clear meaning;